IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.1881 OF 2005

Smt.Shailaja Avinash Dandwate
and Anr. ..Petitioners

Vs.

Sou.Kalyani Prakash Dandge
and Anr. ..Respondents

...
Mr.S.A.Sawant for Petitioners
...

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 29,2005

P.C.:

1. Heard Mr.Sawant, the learned counsel for the Petitioners who were impleaded as defendant nos.1 and 2 in Special Civil Suit No. 837 of 2002. The said suit was decreed on 5.4.2004 by the learned VIIth Jt.Civil Judge S.D.at Pune for an amount of Rs.3,40,000/- with interest at the rate of 18% per annum from December, 2001 till its realisation. This decree has not been challenged by filing an appeal. The decree holder therefore, instituted a Special Darkhast No.96 of 2004 and in the said Darkhast, an application at Exh.12 came to be filed on or about 7.9.2004 under Section 47 of the Civil Procedure Code praying for rejecting the Darkhast proceedings. It was contended that the applicant who is the Judgement

Debtor No.2 did not receive any suit summons but they were served on Judgment Debtor No.1 who is her son and he had misrepresented and accepted the summons. She further claimed that the decree was not binding on her and the suit claim was based on an illegal agreement to which she was not a party. The trial Court rightly held by the impugned order that the challenge to the decree cannot be gone into in the execution proceedings and rejected the application.

2. The reasonings given by the executing Court, cannot be termed as perverse or manifestly erroneous so as to interfere in a petition under Article 227 of the Constitution of India.

3. The petition is therefore, rejected summarily.

[B.H.MARLAPALLE,J.]